Symeonides on Codification and Flexibility in PIL

Dean Symeon C. Symeonides has posted Codification and Flexibility in Private International Law on SSRN. Here is the abstract:

The last fifty-year period has been one of the most productive in the history of private international law (PIL), having produced 61 PIL codifications and 101 international conventions, regulations and other similar instruments. This Article examines the way in which these codifications and other instruments confront the constant tension between the need for legal certainty and predictability, on the one hand, and the need for flexible, equitable, and individualized solutions, on the other. Among the advances of the art and science of codification during this period is the deployment of several new tools – such as alternative or soft connecting factors, escape clauses, or a combination of rules and residual "approaches" – which entrust judges with greater discretion than in the old codifications. These tools produce a new equilibrium and mutual accommodation between certainty and flexibility and suggest that codification need not be antithetical to flexibility.

The paper is forthcoming in the GENERAL REPORTS OF THE XVIIITH CONGRESS OF THE INTERNATIONAL ACADEMY OF COMPARATIVE LAW, K.B. Brown and D.V. Snyder, eds., © Springer Science+Business Media, 2011.